

Service Date: December 11, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF)	UTILITY DIVISION
Southern Montana Telephone Company's)	
Implementation of 1+ IntraLATA Dialing)	DOCKET NO. D98.10.233
Parity.)	ORDER NO. 6126

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 26, 1998, Southern Montana Telephone Company (SMTC) filed its Application for Approval of IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). SMTC's Plan requests approval of the procedures and processes it intends to use to implement 1+ intraLATA toll dialing parity.

Two events triggered this filing. First, SMTC stipulated with U S WEST Communications, Inc. (U S WEST) as part of the settlement agreement in another proceeding that it would file a plan for intraLATA dialing parity implementation by October 23, 1998.¹ The Commission approved this stipulation without modification. *See In the Matter of the Application of Southern Montana Telephone Company for an Increase to Intrastate Carrier access Charges*, Docket No. D97.11.225, Order 6047b (Dec. 3, 1998). An integral part of the agreement between SMTC and U S WEST is SMTC's commitment to implement intraLATA equal access on or before May 1, 1999. The other event triggering the filing was a "bona fide request" from AT&T

¹ The Commission extended this date to October 26, 1998, with no objection from U S WEST.

Communications of the Mountain States, Inc. (AT&T) dated October 2, 1998, and received by SMTC on October 6, 1998 to implement intraLATA dialing parity within six months.²

On April 16, 1998, the Commission adopted rules governing local exchange carriers' (LEC) implementation of intraLATA dialing parity in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). These rules provide the procedures and requirements for ILECs' dialing parity implementation. *See* ARM 38.5.4101 – 38.5.4120.

ARM 38.5.4120 requires SMTC to implement intraLATA dialing parity pursuant to a Commission-approved plan. SMTC states that its Plan conforms to the Commission's rules. ARM 38.5.4120(1) allows interested parties a reasonable opportunity to comment on SMTC's Plan. On November 6, 1998, the Commission issued a Notice of Filing and Opportunity to Comment on SMTC's dialing parity plan. Interested parties were given until November 25, 1998, to comment on the plan. This date was extended until December 4, 1998, pursuant to a request from AT&T. AT&T did not file comments, but indicated informally that it did not object to the Plan.

Following a review of SMTC's Plan, the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

1. The Commission established the intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)." ARM

² Pursuant to ARM 38.5.4103(2) SMTC is required to provide intraLATA dialing parity within six months of receiving a bona fide request for such. The rule applies to all exchanges where it is technically and economically feasible to implement intraLATA dialing parity, but permits companies to request a waiver from the Commission if

38.5.4101, entitled “SCOPE AND PURPOSE OF RULES.” Subsection (2) provides further indication of purpose in adopting the rules:

. . . The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving opportunity to comment to all interested parties. They reflect a careful, reasoned consideration of all comments received, both in response to AT&T’s original petition for the rulemaking and in response to later formal rulemaking inquiries. They were adopted specifically for implementing intraLATA equal access in Montana.

2. ARM 38.5.4120(1) states that ILECs “shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116.” ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC’s toll dialing parity plan shall have a reasonable opportunity to do so. The Commission’s Notice of Filing, served on November 6, 1998, was mailed to all persons on the Commission’s general telecommunications service list.

3. ARM 38.5.4120 provides that SMTC’s Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in, and the manner of distribution of, the customer notification letter;
- (c) a description of SMTC’s anticipated cost of implementation, including SMTC’s specific implementation costs, the vehicle that SMTC intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of SMTC’s proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with SMTC in its role as a

local exchange provider in a competitively neutral manner following implementation.

4. This order does not define terms relating to dialing parity or equal access presubscription; these and other terms are defined in ARM 38.5.4102. We address the general subtopics of intraLATA equal access implementation with respect to SMTC's Plan below:

A. Part II. Implementation Schedule

SMTC will offer dialing parity for intraLATA toll in all of its exchanges by April 16, 1999. The Commission notes that the Plan also refers to an April 17, 1999, implementation date in some places, but understands the correct date to be April 16, 1999, which coincides with SMTC's billing date. This implementation date is ten days later than the six-month deadline required by ARM 38.5.4103(2)(a). Subsection (2)(b), however, provides that local exchange carriers may implement dialing parity pursuant to an alternative schedule if all interexchange carriers who have made bona fide requests (BFRs) agree to a different schedule. AT&T is the only carrier who has made a BFR. AT&T does not object to SMTC's schedule; thus, the Commission will approve this implementation date.

On the scheduled implementation date, SMTC will implement the full "2-PIC" carrier selection methodology required by ARM 38.5.4103(2).

B. Part III. Customer Lists and Carrier Notification Procedures

5. *Carrier notification:* ARM 38.5.4120(3) requires that SMTC provide notice to registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include the implementation schedule, terms and conditions of participation and ordering procedures. All carriers wishing to participate in presubscription must respond to SMTC within 30 days. Further, SMTC may not allow participation by unregistered telecommunications providers.

6. SMTC's plan states that it will provide notification to all registered carriers operating in Montana by December 17, 1998, via U.S. mail. SMTC's proposed Carrier Participation Notice is attached to the Plan as Exhibit A. It requires carriers who wish to participate in presubscription to fax the "IntraLATA Equal Access Participating Carrier" form to SMTC within 30 days after notification.

7. SMTC's plan does not include a provision concerning acknowledgement of participating carriers' forms. The Commission will require such acknowledgement when carriers notify SMTC by fax so that they have a confirmation that their fax was received by SMTC within the 30 days allowed. SMTC may provide for this confirmation as it sees fit, i.e., by fax or other means, but carriers should be made aware up front what to expect. Therefore, SMTC should include a statement in its carrier notification to the effect that it will acknowledge receipt of requests from all carriers responding to the notice. SMTC shall notify carriers within three days.

8. The Commission will not require SMTC to notify all carriers by U.S. Mail. The Commission has established a "listserv" which includes all interexchange carriers who have registered on the Commission's website. The Commission staff will assist local exchange carriers in mailing their carrier notifications electronically, if requested. At SMTC's option, SMTC may use this procedure in lieu of the proposed mailing procedure. If SMTC elects to notify electronically in this manner, it will be responsible for mailing by U.S. mail only to those carriers who cannot be notified electronically.

9. SMTC's proposal for carrier notification is approved with these modifications.

10. *Customer lists:* SMTC will make customer lists available on or before November 20, 1998, to all registered carriers who intend to offer intraLATA equal access

presubscription pursuant to the Plan. The list will include names only for customers whose listings are “non-published.” SMTC’s proposal complies with ARM 38.5.4105(2), which requires SMTC to make customer lists available within 45 days after it receives a BFR for intraLATA equal access implementation.

11. *PIC change requests:* SMTC’s plan states that it will begin accepting letters of authorization (LOAs) from carriers no earlier than February 15, 1999. SMTC recognizes that these LOAs must conform to ARM 38.5.3801 through 38.5.3810 and § 69-3-1304, MCA. SMTC is required by ARM 38.5.4116(1)(e) to accept LOAs within the 60 days prior to implementation. SMTC’s plan is consistent with Rule 4116(1)(e) in this respect. SMTC should begin taking requests from customers at the same time it begins to take requests from carriers.

C. Part IV: Customer Notifications, Education, and Safeguards

12. SMTC must provide sufficient notification and educational information to its end users. SMTC has already implemented interLATA equal access and has procedures in place for educating customers on interLATA presubscription. Customer notification is addressed in several of the Commission’s rules. ARM 38.5.4120(1)(b) states that SMTC’s Plan must describe how notification to end users will be carried out and must include the language SMTC will use in its customer notification letter and describe the manner of distribution of such letter.

13. Customer education and presubscription procedures are set forth in ARM 38.5.4101. ARM 38.5.4105(4) requires all informational materials, forms and scripts to be “complete, clear and unbiased.” It requires local exchange carriers to promptly make any changes required by the Commission before using them. ARM 38.5.4105(4). At least 30 days prior to its scheduled implementation, SMTC must provide written information to its end user customers. The written notification provided pursuant to ARM 38.5.4104 shall describe

intraLATA dialing parity and explain presubscription procedures. The information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carrier—in this case, U S WEST Communications, Inc.—until the end users take action to change it.

14. *Existing customer notification:* SMTC's Plan states that it will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures. SMTC attached as Exhibit C its proposed format to notify customers. SMTC states that it will provide customer notification via direct mail or as a "bill stuffer" prior to March 16, 1999. Customers who subscribe to local service after March 15, 1999, but prior to April 16, 1999, will be provided a copy of this written notification and information upon subscribing to local service. SMTC's plan for notification to existing customers is consistent with Commission rules and its written notification contains a good explanation of intraLATA 1+ presubscription which should help its customers to understand this often-confusing concept.

15. *New customer notification:* SMTC's plan provides that any new customers who commence local service after the mailing to existing customers and before equal access presubscription is implemented shall be provided information from SMTC about their carrier selection options at the time they sign up for local service. These customers may select both their primary interLATA and intraLATA carriers or be assigned no PIC status. SMTC did not address waiver of PIC charges for customers who do not choose a PIC prior to service installation. SMTC should waive charges for these customers for 30 days after service is installed.

16. *Customer safeguards:* ARM 38.5.4116 provides for some safeguards to apply to the business office practices SMTC will use when it implements intraLATA equal access.

SMTC's Plan provides that all customers who have an interLATA PIC freeze on their account will have that PIC freeze placed on their intraLATA service as well. It further provides that SMTC will follow Montana statutes and administrative rules with regard to "slamming" and obtaining required authorizations for PIC changes. SMTC's notice also contains information explaining presubscription procedures and advises end users that they may change their intraLATA PIC once free of charge during the first 90 days following implementation.

17. SMTC's plan provides that a list of all participating registered interexchange carriers who have responded during the 30-day period following SMTC's carrier notice and their toll free telephone numbers will be attached to the customer notification. The notification provides procedures for changing from the present intraLATA carrier. SMTC's notice to end users contains sufficient information to educate customers on intraLATA dialing parity and procedures for requesting a PIC change.

18. *Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires that SMTC's customer information and procedures used to provide new customers information about their carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

19. SMTC's plan states that its representatives will inform new local exchange end users of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial the access code of a carrier to place these calls. New and existing customers may communicate their choice of carriers directly to SMTC through the local business

office or they may do so indirectly through their selected carriers for either interLATA or intraLATA toll.

20. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, “When handling customer-initiated contacts regarding local service matters such as a change in service, [LEC] business office personnel may not engage in promotional efforts for the local exchange carrier’s toll service offerings.” Subsection (1)(c) further provides that when a customer contacts a LEC’s business office to change the PIC from the LEC to a competitor, “the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another).”

21. SMTC states that it will handle all customer-initiated contacts for PIC changes in a neutral manner. SMTC will provide, in random order, the names of all carriers providing intraLATA interexchange service in its area. SMTC does not provide intraLATA toll to its customers and, therefore, many of the concerns expressed by the Commission with regard to contact handling by local exchange carriers who provide intraLATA toll do not apply in this matter.

22. ARM 38.5.4105(4) requires SMTC to provide proposed scripts to the Commission for review as part of its implementation plan. The rule requires that scripts be filed so that the scripts can be reviewed by the Commission prior to approval or modification of the plan. SMTC is required by rule to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than “general service” contacts.

23. SMTC submitted the following script:

You may choose the long distance company you would like to handle your intraLATA long distance calls. (Explain LATA boundaries if necessary.) If you

do not wish to make a selection at this time, you will have to dial a specific company's access code in order to make an intraLATA long distance call. SMTC has a list of companies offering intraLATA long distance in our service territory. If you would like, I can read that list to you.

SMTC's script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

24. The Commission recognizes that a script will not be appropriate for all calls. Some contacts will require that SMTC's representatives adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information provided for in the script, such deviations are acceptable.

D. Part V: Costs Recovery

25. SMTC's Plan states that it will incur incremental costs to implement intraLATA dialing parity which include the following: (1) network hardware upgrades to provide full 2-PIC methodology in all exchanges; (2) central office software upgrades necessary for intraLATA presubscription; (3) software translations; (4) billing systems testing and table modifications; (5) personnel training; (6) customer notification; and (7) implementation activity, including consulting and regulatory costs. These costs are all recoverable pursuant to ARM 38.5.4115.

26. ARM 38.5.4120 requires SMTC's dialing parity plan to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. SMTC states that it has not defined the incremental costs of implementation and that it believes the consultant and regulatory cost to determine a surcharge is uneconomical. Therefore, SMTC does not seek additional originating access fees to recover such costs, provided the regulatory process does not become burdensome and SMTC does not incur substantial unanticipated costs.

27. The Commission will not require SMTC to provide a cost analysis and is satisfied with SMTC's proposal. The public interest is best served by waiving the requirement for cost information for SMSTC. If SMTC incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time. In order to minimize mailing costs, the Commission encourages SMTC to use the procedure for electronic carrier notification discussed infra at ¶ 8.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. SMTC is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that SMTC's intraLATA dialing parity implementation plan is approved as discussed herein.

DONE AND DATED this 8th day of December, 1998, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.